

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

August 12, 2020
Room 150, 801 Capitol Mall, Sacramento,
California

**SUBJECT MATTER OF THE PROPOSED
REGULATIONS:**

Personal Services Contracts

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of
Regulations Adopt Section 547.60.2

In this rulemaking action, the State Personnel Board (Board) proposes to adopt Board rules 547.60.2 of Title 2, Chapter 1, of the Code of Regulations (CCR).

PURPOSE, NECESSITY, AND BENEFITS OF REGULATORY ACTION:

Background:

Government Code section 19132, subdivision (b)(1), provides:

“Unless a personal services contract pursuant to subdivision (b) of Section 19130 is necessary due to a sudden and unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment to life, health, property, or essential public services, the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform *the type of work* to be contracted.” [Emphasis added]

The California Constitution, Article VII, as interpreted by the California Supreme Court, has established an implied “civil service mandate” that prohibits state agencies from contracting with private entities to perform work that the state has historically and customarily performed and can perform adequately and competently. Government Code section 19130 codifies some exceptions to this civil service mandate as recognized in various court decisions.

According to the legislative analysis, the notification requirement contained in Government Code section 19132, subdivision (b) (1), was added to ensure transparency and to build and maintain a strong civil service system, as envisioned in the State Constitution. Because of the high volume of personal services contracting,

the unions supported the legislation as a way to provide access to contracting information rather than relying solely on their members to expose the practice within their individual departments:

"According to the Assembly Budget Subcommittee 4 Agenda for its February 21, 2012 hearing, the state currently has over 14,000 personal service contracts worth \$11.8 billion. These expenditures occur with no substantive legislative oversight." (A.B. 906 Assembly Floor Analysis, 2013.)

Prior to executing a contract or amendment to a contract pursuant to Government Code section 19130, subdivision (b), the contracting agency must notify all organizations that represent state employees who perform the type of work to be contracted, unless expressly exempted from the notification requirement. It is the contracting agency's responsibility to identify the appropriate employee organization(s) to be notified, or, in the alternative, send the notification to all employee organizations.

It is not permissible for the contracting agency to fail to provide notification based on a conclusion that no represented employees perform the type of work to be contracted. In instances where an employee organization cannot be readily identified, the contracting agency must notify all employee organizations.

Departments who fail to notice unions of personnel services contracts will be cited as violating Government Code section 19132, subdivision (b) (1).

Discussion of Each Adoption, Amendment, and Repeal, and Anticipated Benefits:

The following paragraphs set forth the problems with the current regulations, a summary of the proposed changes, the purpose and rationale of each adoption, amendment or repeal, and the anticipated benefits of each adoption, amendment, or repeal.

Adopt Section 547.60.2 Notice to Employee Organizations

The problem is that departments have not been noticing unions prior to executing contracts or amendments as they have concluded that current state employees are not currently performing the type of contracted work or do not know which unions to contact. The purpose of section 547.60.2, is to clarify that contracting state agencies must notify all organizations representing employees who perform or could perform the type of contracted work of all personal services contracts not expressly exempted from the requirements of Government Code section 19132, subdivision (b)(1). Additionally, the amended Section 547.60.2 specifies that it is the contracting agency's responsibility to identify and notify the appropriate employee organization or, when the contracting agency is unable to determine the appropriate employee organization, to notify all employee organizations. Contracting agencies cannot conclude that no union represented employees perform or could perform the type of work to be contracted.

The anticipated benefits of this regulatory action is to increase openness and transparency in state government related to contracting out for services.

ECONOMIC IMPACT ASESMENT:

The proposed regulations set a standard only related to the notice procedures state agencies must follow when entering into personal services contracts under Government Code section 19132, subdivision (b)(1). Therefore, the adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the health and welfare of California residents in that the benefits of this regulatory action include openness and transparency in state government and improved efficiency in the Board's compliance reviews of personal services contracts.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:

None.

ANTICIPATED BENEFITS OF THE REGULATORY ACTION:

The benefits of this regulatory action is to increase openness and transparency in state government related to personal services contracting.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:

The proposed regulations set a standard only related to the notice procedures state agencies must follow when entering into or amending personal services contracts under Government Code section 19132, subdivision (b)(1). Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES:

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.